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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,731	09/22/2003	Philip C. Backus	7239.3001.001	9681

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FARRIS LAW, P.C.  
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SAGINAW, MI 48638

EXAMINER
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LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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08/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

.10/667,731

Applicant(s)

BACKUS, PHILIP C.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-12 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9 is/are rejected.
- 7) ☒ Claim(s) 6-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 1-4 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in Applicant's originally filed disclosure are the left and right joints said to be permanent and non releasable.

### ***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Johnson (US 6,032,841).

Under 35 U.S.C. 102(b), Johnson discloses a carrier made from rubber sheet material (col. 4 line 5) comprising a central strip (16) with a left and right end; a left front band portion (14) with a left front band upper edge integral with the left end of the

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central strip, a left front band lower edge, a left front band free end, and a left front band rear portion (14'); a right front band portion (12) with a right front band upper edge integral with the right end of the central strip, a right front band lower edge, a right front band free end (13), and a right rear band portion (12') integral with the central strip and the right front band portion; a left joint (24/28) connecting the left front band free end to the left rear band portion; and a right joint (22/26) connecting the right band free end to the right rear portion.

Regarding the left and right joints being permanent and non-releasable, Examiner is of the position that the joints of Johnson are permanent and non-releasable to the degree that Applicant has disclosed.

Regarding the left and right joints being used to form left and right frustoconical receiving passages, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Johnson which is capable of being used in the intended manner, i.e., the left and right joints being connected such that the receiving passages have a frustoconical shape. There is no structure in Johnson that would prohibit such functional intended use (see MPEP 2111). The nature of hook and loop fasteners would certainly allow for such a connection.

Regarding the carrier being used to carry a bucket, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Johnson which is capable of being used in the intended manner, i.e., to carry a

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bucket(s). There is no structure in Johnson that would prohibit such functional intended use (see MPEP 2111). Note that buckets can be of any size. One or more smaller-sized buckets could certainly be carried by Johnson's device.

Under 35 U.S.C. 103(a), Official Notice is taken to the fact that it is old and well known in the art to glue hook and loop pads to the surface on which they are to be used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the hook and loop pads (22,24,26,28) of Johnson to the left and right bands using glue, which would arguably make the pads permanently attached and non-removable from the bands, effectively satisfying the limitations of the claim.

***Claim Rejections - 35 USC § 103***

5. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson as applied in paragraph 4 above.

Regarding claim 5, the Johnson carrier as applied above includes the claimed features except for the upper and lower edged of the left and right side bands having an arcuate shape. It has been well settled that a change in shape or form is not patentable as long as the function of the device being modified is not itself modified. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to make the upper and lower edges of the left and right band portions to have an arcuate shape, or any other shape or contour, as the bands would still function to be wrapped around an object and fastened together, securing the object therein.

Regarding claim 9, the Johnson carrier as applied above is made from rubber sheet material. In order to obtain the particular shape of the device from a sheet of rubber, one of ordinary skill would find it obvious to cut the particular shape out of the rubber sheet material. Having satisfied the first method step, Johnson then teaches wrapping the left and right front and rear band portions around a conical surface (Figure 2), overlapping the rear and front band portions (Figure 2), and applying an adhesive to the left and right rear and front band portions to form a left and right band with a carrier passage (Figure 2). Examiner is considering the act of applying an adhesive to be the act of applying the hook-type fasteners to the loop-type fasteners between the left and right band portions.

***Allowable Subject Matter***

6. Claims 10-12 are allowed.
7. Claims 2-4 and 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Examiner sees no reason or teaching in the prior art of record that would motivate one of ordinary skill in the art to include additional tongues or flaps on the structure of Johnson.

***Response to Arguments***

9. Applicant's arguments filed 7/9/07 have been fully considered but they are not persuasive. Applicant has asserted that the joints of Johnson are not permanent and non-releasable. Examiner refers Applicant to paragraphs 1 and 4 above. Applicant has

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asserted that the loop passages of Johnson are not frustoconical. Examiner refers Applicant to paragraph 4 above, in particular, "Regarding the left and right joints being used to form left and right frustoconical receiving passages, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Johnson which is capable of being used in the intended manner, i.e., the left and right joints being connected such that the receiving passages have a frustoconical shape. There is no structure in Johnson that would prohibit such functional intended use (see MPEP 2111). The nature of hook and loop fasteners would certainly allow for such a connection."

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML  
8/9/07

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER